

SENATE BILL 537
By Haun

AN ACT to enact the "Tennessee Real Property Inspectors Act of 1997" and to amend Tennessee Code Annotated, Title 62.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 62, is amended by adding the following Sections 2 through 37 as a new chapter:

SECTION 2. The title of this act is, and may be cited as the "Tennessee Real Property Inspectors Act of 1997".

SECTION 3. As used in this act, unless the context otherwise requires:

(1) "Act" or "chapter" means the "Tennessee Real Property Inspectors Act of 1997".

(2) "Inspection" means a written or oral statement independently and impartially prepared by a state-licensed inspector setting forth an opinion as to the condition of a certain property as of a specific date, supported by the presentation and analysis of relevant information prepared in conformity with the uniform standards of a professional inspector;

(3) "Inspection report" means any communication, written or oral, of a real property inspection. For the purposes of this chapter, the testimony of an inspector relative to the inspector's analyses, conclusions or opinions concerning identified real estate or identified real property is deemed to be an oral inspection report;

(4) "Commission" means the Tennessee real estate commission;

(5) "Real estate" means an identified parcel or tract of land with improvements;

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(6) "Real estate inspection activity" means the act or process of making an inspection of real estate or real property and preparing an inspection report;

(7) "Real estate inspection" means a person who engages in real estate inspection activity for a fee or other valuable consideration;

(8) "Real property" means one (1) or more defined interests, benefits and rights inherent in the ownership of real estate;

(9) "Specialized services" means those inspection services which do not fall within the definition of inspection. "Specialized services" may include any other non-inspection activity. Regardless of the intention of the client or employer, if the inspection would be perceived by third-parties or the public as acting as a disinterested third-party in rendering an unbiased analysis, opinion or conclusion, the work is classified as an inspection activity or report and not specialized services;

(10) "State-certified real estate inspector" means a person who develops and communicates real estate inspections and who holds a current, valid certificate issued to such person for either general, commercial or residential real estate inspections issued pursuant to the provisions of this chapter;

(11) "State-licensed real estate inspector" means a person who holds a current, valid real estate residential inspector license issued pursuant to the provisions of this chapter.

SECTION 4.

(a) It is unlawful for any person to solicit real estate or real property inspections, or prepare an inspection report relating to real estate or real property in this state, without first obtaining a real estate inspector's license or certificate.

(b) Nothing in this chapter shall be construed to prohibit any person who is licensed to practice in this state under any other law from engaging in the practice for which such person is licensed.

SECTION 5.

(a) No person other than a state-certified real estate inspector under this chapter shall assume or use that title or any title, designation or abbreviation likely to create the impression of certification as a real estate inspector by this state.

(b) (1) Only an individual who has qualified as a state-certified real estate inspector under this chapter is authorized to prepare and sign a certified inspection report relating to real estate or real property in this state.

(2) If an inspection report is prepared and signed by a state-certified real estate inspector and such inspection report is certified as such by the state-certified real estate inspector, a holder of a real estate inspector license or a license as a real estate inspector trainee who assisted in the preparation of such inspection report is authorized to co-sign such inspection report.

(3) An individual who has not qualified as a state-certified real estate inspector shall not describe nor refer to any inspection or inspection report relating to real estate or real property in this state by the terms "inspection" or "certified inspection report."

SECTION 6.

(a) Applications for original license or certification, renewal license or certification, and examinations shall be made in writing to the commission on forms approved by the commission.

(b) Appropriate fees, as fixed by the commission, must accompany all applications for original license or certification, renewal license or certification and examination.

(c) At the time of filing an application for license or certification, each applicant shall sign a pledge to comply with the standards set forth in this chapter and state that the applicant understands the types of misconduct for which disciplinary proceedings may be initiated against a state-licensed or-certified real estate inspector, as set forth in this chapter.

SECTION 7.

(a) A state-licensed inspector may perform inspections of the following properties:

(1) All residential properties with a transaction value of up to five hundred thousand dollars (\$500,000);

(b) A state-certified commercial inspector shall be authorized to inspect all properties that a state-licensed inspector may inspect and also all commercial real property with a transaction value of up to one million dollars (\$1,000,000);

(c) A state-certified general inspector shall be authorized to inspect all residential and commercial properties and shall have no transaction value limits on such inspector's inspection practice.

SECTION 8.

To qualify for a real estate inspector license, an applicant must:

(1) Have a high school diploma or its equivalent;

(2) Have met the current requirements for licensure as set forth by the commission.

SECTION 9.

(a) If the commission determines that an applicant meets the requirements of this chapter and is qualified for a real estate inspector license, it shall issue a license to the applicant that shall expire two (2) years following the date of issuance unless revoked or suspended prior thereto. The expiration date of the license shall appear on the license and no other notice of its expiration need be given to its holder.

(b) The commission shall also promulgate the necessary rules and regulations to provide for an apprenticeship with a licensed inspector for a reasonable duration, in order for a person to qualify for examination and licensure.

SECTION 10.

The commission shall promulgate regulations to ensure that each individual renewing such individual's license as a real estate inspector under this chapter has a working knowledge of current real estate inspection theories, practices and techniques that will enable such individual to provide competent real estate inspection services to the members of the public with whom such individual deals in a professional relationship.

SECTION 11.

(a) To renew a current, valid real estate inspector license, the holder of such license shall file an application on a form approved by the commission and pay the prescribed renewal fee to the commission not earlier than one hundred twenty (120) days nor later than thirty (30) days prior to the expiration date of the license. Each application for renewal shall be accompanied by evidence in the form prescribed by the commission of having completed any continuing education requirement.

(b) The commission may refuse to renew any license if the licensee has continued to perform real estate inspection activities in this state following the expiration of such license.

SECTION 12.

The commission shall have the power to discipline and penalize a license or certificate holder for violations of this chapter or the rules and regulations of the commission.

SECTION 13.

(a) There shall be at least three (3) classes of certification for state-certified real estate inspectors, as follows:

(1) A state-certified residential real estate inspector classification shall include those persons meeting the requirements for certification relating to the inspection of residential real property;

(2) The state-certified commercial real estate inspector classification shall include those persons meeting the requirements for certification relating to the inspection of commercial real property;

(3) The state-certified general real estate inspector classification shall include those persons meeting the requirements for certification relating to the inspection of all types of real property.

(b) The application for original certification, renewal certification and examination shall specify the classification of certification being applied for and previously granted.

SECTION 14.

An original certification as a state-certified real estate inspector shall not be issued to any person who has not demonstrated through a written examination process that the person possesses the following:

(1) Appropriate knowledge of technical terms commonly used in or related to real estate inspection, inspection report writing and economic concepts applicable to real estate;

(2) Understanding of the principles of land economics, real estate inspection processes, and problems likely to be encountered in gathering, interpreting and processing of data in carrying out such inspections;

(3) Understanding of the standards for the development and communication of real estate inspections;

(4) Knowledge of theories of cost-estimating, construction, and maintenance and repair, appropriate to the classification of certificate applied for;

(5) Knowledge of other principles and procedures as may be appropriate for the respective classifications;

(6) Basic understanding of real estate law; and

(7) Understanding of the types of misconduct for which disciplinary proceedings may be initiated against a state-certified real estate inspector.

SECTION 15.

(a) As a prerequisite to taking an examination for certification under this act, an applicant shall submit satisfactory evidence of compliance with the current requirements for certification as a certified general real estate inspector as set forth by the commission.

(b) As a prerequisite to taking an examination for certification under this Act, an applicant shall present satisfactory evidence to the commission that such applicant has completed the current requirements for certification as set forth by the commission.

(c) As a prerequisite to taking the examination for certification as a state-certified residential real estate inspector, an applicant shall present satisfactory evidence to the commission that such applicant has completed the current requirements for certification as set forth by the commission.

SECTION 16.

(a) The initial certification issued under the authority of this chapter shall expire upon the expiration date of the certificate held by a certificate holder. Thereafter, the term of a certificate issued under the authority of this chapter shall be two (2) years from the date of issuance unless revoked or suspended prior thereto.

(b) The expiration date of the certificate shall appear on the certificate and no other notice of its expiration need be given to its holder.

SECTION 17.

The commission may deny the issuance of a certificate as a state-licensed or-certified real estate inspector to an applicant who has been convicted of a felony or on any of the grounds enumerated in this chapter, or under any rules and regulations promulgated by the commission.

SECTION 18.

(a) Each state-licensed or-certified real estate inspector shall advise the commission of the address of such inspector's principal place of business and all other

addresses at which such inspector is currently engaged in the business of preparing real property inspection reports.

(b) Whenever a state-licensed or-certified real estate inspector changes a place of business, such inspector shall within thirty (30) days give written notification of the change to the commission.

(c) Every state-licensed or-certified real estate inspector shall notify the commission of such inspector's current residence address.

(d) The commission shall charge a fee of twenty-five dollars (\$25.00) for processing a change of address request. Failure to promptly notify the commission of the change of address and pay the applicable fee is grounds for disciplinary action.

SECTION 19.

No person engaged in the business of real estate inspection in this state or acting in the capacity of a real estate inspector in this state may bring or maintain any action in any court of this state to collect compensation for the performance of real estate inspection services for which a license or certificate is required by this chapter, without filing with the court competent proof that such person was licensed or certified as a real estate inspector in this state at all times during the performance of such services.

SECTION 20.

(a) Any person required by this chapter to be licensed who engages in real estate inspection activity in this state without obtaining a license therefor, or who violates any provision of this chapter, commits a Class C misdemeanor, punishable by a fine not to exceed fifty dollars (\$50), and shall be ineligible to obtain a license for a period of one (1) year from the date of such person's conviction of such offense.

(b) The board shall not deny, revoke, suspend, refuse to renew, or discriminate against any applicant for membership or lack of membership in any real estate inspector organization.

(c) No person, corporation, governmental entity, bank or other financial institution shall discriminate against any inspector for membership or lack of membership in any inspection organization. A violation of this subsection is a Class A misdemeanor.

(d) Any attempt by any person, corporation, governmental entity, bank or other financial institution to unduly intimidate an inspector or influence an inspector's report relating to determination of condition of any property is a Class A misdemeanor.

(e) The commission shall use all available means to locate and communicate with all persons holding themselves out as inspectors.

SECTION 21.

The commission shall prepare and issue at least once each calendar year a roster showing the name and place of business of each real estate inspector currently licensed and each real estate inspector currently certified. A copy of such roster shall be made available to the public, upon application to the commission, at such reasonable price per copy as may be fixed by the commission.

SECTION 22.

The commission, upon payment of a fee in an amount specified in its regulations, shall issue a letter stating that a license or certificate holder is in good standing in this state.

SECTION 23.

(a) If, in the determination of the commission, a state is deemed to have equivalent requirements for licensure and certification, and if that state grants reciprocity to Tennessee licensees and certificate holders, then the commission shall grant reciprocal rights to licensees and certificate holders who are in good standing in such state.

(b) The commission shall set reasonable fees for the practice of real property inspection in Tennessee by licensees and certificate holders of other states who have been granted reciprocity.

SECTION 24.

(a) A license or certificate issued under authority of this chapter shall bear the license or certificate number assigned by the commission.

(b) Each state-licensed real estate inspector shall place the real estate inspector's license number adjacent to or immediately below the title "State-Licensed Real Estate Inspector" when used in an inspection report or in a contract or other instrument used by the license holder in conducting inspection activities, unless the licensed inspector is also a state-certified inspector.

(c) Each state-certified real estate inspector shall place the real estate inspector's certificate number adjacent to or immediately below the title "State-Certified Residential Real Estate Inspector", "State-Certified Commercial Real Estate Inspector" or "State-Certified General Real Estate Inspector" when used in an inspection report or in a contract or other instrument used by the certificate holder in conducting inspection activities.

(d) A state-certified general real estate inspector may use the initials "C.G.P.I.", a state-certified commercial real estate inspector may use the initials "C.R.P.I.", a state-certified residential real estate inspector may use the initials "R.R.P.I.", and a state-licensed real estate inspector may use the initials "L.R.P.I.". The initials should be immediately followed by the license or certificate number. The unauthorized use of these initials by an unlicensed person to imply that they are a licensed or certified inspector is a Class C misdemeanor.

SECTION 25.

(a) "State-certified commercial real estate inspector", "state-certified residential real estate inspector", "state-certified general real estate inspector" or "state-licensed real estate inspector" may only be used to refer to individuals who hold the license or certificate and may not be used following or immediately in connection with the name or signature of a firm, partnership, corporation or group, or in such manner that it might be

interpreted as referring to a firm, partnership, corporation, group, or anyone other than an individual holder of the license or certificate.

(b) No license or certificate shall be issued under the provisions of this chapter to a firm, partnership, corporation or group. This shall not be construed to prevent a state-licensed or-certified real estate inspector from signing an inspection report on behalf of a firm, partnership, corporation or group practice.

SECTION 26.

(a) In accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5, the commission shall promulgate rules to ensure that each individual renewing such individual's license or certificate has a working knowledge of current real estate inspection theories, practices, and techniques sufficient to enable such individual to provide competent real estate inspection services to the members of the public with whom such individual deals in a professional relationship.

SECTION 27.

The rights of any applicant or holder under a certificate as a state-licensed or-certified real estate inspector may be revoked, suspended, or restricted, or the owner of the certificate may be assessed a civil penalty of up to one thousand dollars (\$1,000) per violation, or otherwise disciplined in accordance with the provisions of this chapter, upon any of the following grounds:

(1) Procuring or attempting to procure a license or certificate pursuant to this chapter by knowingly making a false statement, submitting false information, refusing to provide complete information in response to a question in an application for a license or certificate or through any form of fraud or misrepresentation;

(2) Paying money other than provided for by this chapter to any member or employee of the commission to procure a license or certificate under this chapter;

(3) Conviction, including conviction based upon a plea of guilty or nolo contendere, of a crime which is substantially related to the qualifications, functions, and

duties of a person developing inspections and communicating inspections to others, or conviction of any felony;

(4) An action or omission involving dishonesty, fraud or misrepresentation; or

(5) A violation of any of the standards for inspections and inspection practice as set forth in this chapter and the rules and regulations promulgated by the commission.

SECTION 28.

(a) Before suspending or revoking any license or certification, the commission shall notify the inspector in writing of any charges within a reasonable period of time prior to the date set for the hearing and shall afford such inspector an opportunity to be heard in person or by counsel.

(b) The written notice may be served either personally or sent by registered or certified mail to the last known business address of the inspector.

(c) The commission shall have the power to subpoena and issue subpoenas duces tecum and to bring before it any person in this state, and to take testimony by deposition, in the same manner as prescribed by law in judicial proceedings in the courts of this state.

SECTION 29.

The hearing on the charges shall be at a time and place prescribed by the commission and in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in Title 4, Chapter 5.

SECTION 30.

(a) A state-licensed or-certified real estate inspector may not accept a fee for an inspection assignment that is contingent upon the inspector reporting a predetermined estimate, analysis or opinion or is contingent upon the opinion or conclusion, or upon the consequences resulting from the inspection.

(b) A state-licensed or-certified real estate inspector who enters into an agreement to perform specialized services may be paid a fixed fee or a fee that is contingent on the results achieved by the specialized services.

SECTION 31.

(a) A state-licensed or-certified real estate inspector shall retain for five (5) years originals or true copies of all written contracts engaging his services for real property inspection work, and all reports and supporting data assembled and formulated by the inspector in preparing the reports.

(b) The five-year period for retention of records is applicable to each engagement of the services of the inspector and shall commence upon the date of the submittal of the inspection to the client unless, within such five-year period, the inspector is notified that the inspection or report is involved in litigation, in which event the five-year period for the retention of records shall commence upon the date of the final disposition of such litigation.

(c) All records required to be maintained under the provisions of this chapter shall be made available by the state-licensed or-certified real estate inspector for inspection and copying by the commission on reasonable notice to the inspector.

SECTION 32.

The commissioner is authorized to promulgate rules and regulations to effectuate the purposes of this act. All such rules and regulations shall be promulgated in accordance with the provisions of Tennessee Code Annotated, Title 4, Chapter 5.

SECTION 33.

It is the legislative intent that the provisions of this chapter shall not require an applicant to have more than the minimum hourly requirements of education and experience in order to qualify for full licensure or certification. The minimum requirements are those requirements set forth by the commission. The commission shall have the authority to adjust hourly education and experience requirements.

SECTION 34.

(a) A nonresident of this state, who shows proof of such nonresident's proper licensure or certification in another state, may upon payment of a fee set by the commission, enter into the state of Tennessee and perform an inspection of only one (1) specific parcel of real property. Upon payment of the fee, the commission shall issue the inspector a temporary practice permit. When that inspection is completed, the temporary practice permit shall expire.

(b) A nonresident of this state, who shows proof of such nonresident's proper licensure or certification in another state, may, upon payment of a fee set by the commission, enter into the state of Tennessee and perform inspections of multiple properties for a period of sixty (60) days. Upon the expiration of the sixty-day period, the permit shall expire.

(c) Under no circumstances, other than as stated in this chapter, shall an inspector who is not licensed or certified in this state be authorized to perform inspections in the state of Tennessee.

(d) Every applicant for a temporary practice permit shall file with the commission, on a commission form, an irrevocable consent that legal actions may be properly commenced against such applicant in this state. The consent shall be duly notarized and, if made by a corporation, shall be authenticated by its seal.

SECTION 35.

Nothing in this act shall be construed to prevent any inspector from being able to be covered by standard errors and omissions insurance applicable to real estate brokers, agents and appraisers as provided for in this title.

SECTION 36.

(a) Any person who can demonstrate that he or she has been in the profession of real property inspection on or before May 1, 1997, may be eligible to receive a real property inspector's license if the applicant is in substantial compliance with the licensing

requirements of this chapter and the applicant can demonstrate employment in the profession by:

- (1) date of filing of a corporate charter with the secretary of state; or
- (2) date of registration with the department of revenue for tax purposes; or
- (3) date of registration with the department of employment security; or
- (4) date of registration with the Internal Revenue Service for establishment of an employer identification number; or
- (5) date of business registration license with the local county clerk.

(b) Upon demonstration of experience, education and proper documentation, a person qualifying under this section may be certified under the appropriate residential, commercial or general classification, pursuant to the recommendation and final approval by the commission.

SECTION 37.

(a) Each licensee or certificate holder who is licensed under this chapter may carry errors and omissions insurance to cover all activities contemplated under this chapter.

(b) The commission shall make the insurance required under this section available to each licensee by contracting with an insurance provider for errors and omissions insurance coverage for each licensee after competitive, sealed bidding in accordance with Title 12, Chapter 3.

(c) Any policy obtained by the commission shall be available to each licensee with no right on the part of the insurance provider to cancel coverage for any licensee, other than as set forth by the commission and in compliance with § 56-7-1803.

(d) Each licensee shall have the option of obtaining errors and omissions insurance independently, if the coverage contained in an independently obtained policy complies with the minimum requirements established by the commission.

(e) The commission shall determine the terms and conditions of coverage required under this section, including, but not limited to, the minimum limits of coverage, the permissible deductible, and the permissible exemptions.

(f) Each licensee shall be notified of the required terms and conditions of coverage for the policy at least thirty (30) days before the licensee's renewal date. A certificate of coverage, showing compliance with the required terms and conditions of coverage, may be filed with the commission by the license renewal date by each licensee who elects not to participate in the insurance program administered by the commission.

(g) If the commission is unable to obtain errors and omissions insurance coverage to insure all licensees who choose to participate in the insurance program at a reasonable premium, in such amount as determined by the commission, the requirement of insurance coverage under this section shall be void during the applicable contract period.

(h) The errors and omissions insurance coverage required by this section shall become effective as a condition of license granting or renewal on December 31, 1998. If practical, the commission may offer the coverage on a voluntary basis before such date.

SECTION 38. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 39. For the purpose of promulgating rules and regulations, this act shall take effect upon becoming a law. For all other purposes, this act shall take effect on January 1, 1998, the public welfare requiring it.

AN ACT to enact the Tennessee Real Property Inspectors Act of 1997 and to amend Tennessee Code Annotated, Title 62, relative to real property inspectors.

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